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December 17, 1996

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Federal Communications Commission
Office of Secretary

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CS Docket No. 96-60
Ex Parte Presentation

Dear Mr. Caton:

On behalf of ValueVision International, Inc. ("ValueVision"), and pursuant to Section 1.1206 of the Commission's rules, this notice is filed in duplicate to notify the Commission that on December 17, 1996, representatives of ValueVision met with Anita Wallgren to discuss matters raised in ValueVision's comments and reply comments filed in the above-referenced proceeding, and the attached materials.

If there are any questions concerning the above-referenced matter, please communicate with the undersigned.

Sincerely yours,

William R. Richardson, Jr.

cc: Anita Wallgren

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Re: CS Docket No. 96-60
Ex Parte Presentation

Dear Mr. Caton:

On behalf of ValueVision International, Inc. ("ValueVision"), this is to update the record of this proceeding to bring to the Commission's attention recent developments that flatly rebut a number of cable operator contentions regarding the viability and economics of commercial leased access.

Throughout this proceeding, TCI and other MSOs have consistently argued that the economics of leased access are unworkable. In their view, popular cable channels simply cannot afford to pay cable operators for carriage; instead, such channels depend upon the fees that cable operators pay them.[1] These commenters have sought to draw a dichotomy between highly popular cable channels that operators need to carry without charge because of the contribution these channels make to subscriber satisfaction, and potential leased access programmers that somehow must be less popular but can afford to pay leased access rates.

At bottom, this argument simply amounts to a quarrel with the clear policy judgment made by Congress in the 1992 Cable Act, in which it determined to reform the leased access provisions of the 1984 Act to ensure that leased access becomes a "genuine outlet" for unaffiliated programmers. But recent actions reportedly taken by TCI now reveal this dichotomy to be completely false in any event.

1/ See, e.g., Comments of TCI at 9; Comments of Time Warner at 13.

According to these reports, the Cartoon Network, Animal Planet, The Learning Channel, and Home & Garden Television have now agreed to pay TCI perhaps as much as $5 to $8 per subscriber for long-term carriage on its systems.[2] In order to make room for these new programmers, TCI is bumping other highly popular programmers such as WGN --- programmers that have not been paying TCI such carriage fees. As ValueVision has previously reported, this is not the first time that TCI has recently replaced established programmers with new ones paying additional fees. In October 1996, TCI opted to drop Lifetime and other established programmers in favor of a new Fox news channel -- despite prior surveys indicating that TCI subscribers did not prefer a second news channel.[3] Group W recently reported a similar experience. A cable operator demanded that Group W pay for carriage, even though its network had finished second in a survey of what programming should be added to the system. Group W concluded that "you could have good-quality programming, you could finish first in the survey, and still not get on."[4]

These recent developments underscore a number of important facts relating to the Commission's leased access proposals:

1. First, this debate is essentially about control, not economics. It is now clear beyond question that TCI, for example, is not averse to auctioning off portions of its channel capacity to the "highest bidders." Multichannel News, Dec. 9, 1996, at 240. But unlike Congress, TCI prefers that the operator rather than the Commission establish the qualifications of bidders in the auction. The difference between what Congress intended as a genuine outlet for unaffiliated programmers, and what cable operators would do with these channels, is also very clear. In TCI's case, it first selected Fox News -- in which it now holds an equity interest. And then it selected at least three more channels in which it also holds equity interests (Cartoon Network, Animal Planet, and The Learning Channel).

2. Second, the undocumented notion that adding leased access programmers would cause significant subscriber loss once again is belied by cable operators' own conduct. As with the Lifetime-Fox switchout, the issue now appears to be, not whether incumbent programming is popular with subscribers, but whether the incumbent is willing to pay for carriage. Indeed, the prime time ratings for WGN (now being dropped) in 2Q 1996 were higher than those of The Learning Channel and Home & Garden combined. Thus, cable operators' concerns about subscriber satisfaction and retention, expressed in their comments, appear to be another case of crocodile tears -- particularly in light of the reported contemplation of substantial increases in subscriber rates that will accompany these drops of established channels. The plain fact is that absent effective competition subscribers have no other choice. Such competition

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[2] "Networks Learn Their TCI Fates," Multichannel News, Dec. 9, 1996, at 5, 14; "Nets Wait for Next Shoe to Drop," Multichannel News, Nov. 25, 1996, at 1.

[3] See Ex Parte Presentation of ValueVision, October 2, 1996.

[4] "Pay for Play? New Nets Ponder Their Problems," Multichannel News, Dec. 2, 1996, at 116.

clearly does not yet exist. The cable industry added more subscribers this year than DBS providers did, and TCI reports that it lost only 12,000 subscribers to DBS in 1996. Cableworld, Dec. 2, 1996, at 126.

3. Finally, the fees now reportedly being paid by cable programmers being added to TCI systems may serve as useful corroboration of ValueVision's proposed proxy for leased access rates. As ValueVision has repeatedly noted, cable operators have consistently accepted payments of 7 to 12 cents per subscriber per month from two cable channels (QVC and HSN) -- demonstrating that leased access rates in this range can hardly be viewed as unprofitable to them. TCI has reportedly claimed that the $5 to $8 per subscriber estimates described above are overstated.[5] Even using these figures, however, proves the point. A $5 payment per subscriber for five years of carriage, for example, would be the equivalent of $1 per year, or 8 cents per month (even absent any return payments from TCI in the later years). To the extent that the Commission has any remaining questions about the economics of the proposals in the Notice, it can and should seek additional information about the nature and direction of these payments and the length of the carriage commitments associated with them.

Respectfully submitted,

William R. Richardson, Jr.

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[5] Multichannel News, Dec. 9, 1996, at 14.

War looms over program prices

Operators say escalating costs have to stop, even if it means dropping channels

By Price Colman
ANAHEIM

If content is king in the new world of television, then the king had better prepare for a revolt.

In a theme repeatedly echoed during the Western Show last week, cable operators stressed their distress over the relentless escalation of programing costs and the impact it has had on their business.

"This is a tough, bloody year," InterMedia's Leo Hindery declared during the show's first-ever "preview" session, on Tuesday. "I think we as an industry need to understand the pressures that we are putting on each other.... This is not an easy time for relationships in the industry."

From all signs, more blood will be shed before MSOs and programers resolve their conflict. Tele-Communications Inc. has taken the early lead in hard-line negotiations with networks, all but demanding concessions from them. TCI Chairman John Malone gave a sign of what's likely ahead when he told analysts and investors at the Bear, Stearns conference in October that he was going to play "Darth Vader" in negotiations with programers.

Malone has also said that he's seeking win-win negotiations with networks, but his primary emphasis has been on slashing programing costs to achieve net earnings for TCI.

Few, if any, have been immune from the Malone force.

"TCI is dramatically indifferent to the ownership of services," said Peter Barton, president of TCI programing subsidiary Liberty Media Corp., during the show's official opening session Wednesday morning. While defending his parent company as seeking a win-win scenario with programers, Barton said TCI's approach to programers is "you'd better wake up and either work with us or start thinking about a business model that doesn't include us."

Demonstrating support for Malone's aggressive approach, Jones Intercable CEO Glenn Jones suggested that dropping a high-profile network is not inconceivable: "The one thing I have learned is that you can take off any network—I don't care what it is, CBS, NBC—and there's not enough trauma in your cable system that you can't survive it. Let's not come to that."

A source close to Jones later said the CEO was clearly drawing a line that programers would cross at their own risk.

The growing conflict between operators and programers did not take a backseat at a show intended to highlight the camaraderie and common interests shared by programers and operators. Instead, the potential for a war between cable's operator and programing states appears increasingly likely in '97.

THE WESTERN show

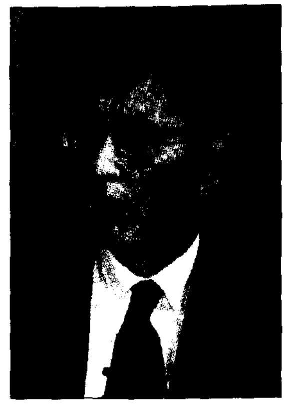
Show Topper

Attendance at this year's Western Show in Anaheim was a record-breaker:

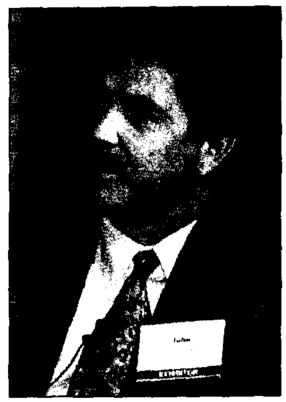
1996	**26,122**
1995	23,200
1994	21,700

MSO executives' comments suggested they are as resentful of being excluded from discussions about programing rate increases as they are of being the public relations foil when they pass on such rate hikes to their customers.

"If we're getting charged based on assumptions [about ratings], I've got to be part of that conversation," said Hindery, who added: "There's something going on here that's driving a wedge between the pipeline side and the oil side of this business. We are seeing rate increases year after year after year [based on an inaccurate rating system]. Eighty percent of my rate increase last year was content-cost driven.... There's something going on here that we have to start talking about."

InterMedia's Hindery and Jones Intercable's Jones see tougher negotiations with programers over prices.



Discovery's John Hendricks was among the programers butting heads with operators.

Cable and broadcast executives have criticized audience rating services such as Nielsen. Critics contend that Nielsen is slow, expensive and inaccurate.

Liberty's Barton cited sports programing—a key element in most MSOs' channel lineups—as rocket fuel for rising programing costs. "Other costs are up 17 to 20 percent. Sports is going up 30 to 50 percent per year. [Sports] is a tough business, and it will never be a comfortable business for anybody."

Barton suggested that programers could ease the tension with operators by being creative in contract negotiations: "There is a need on the part of cable operators for exclusivity. It's something Liberty is very much interested in developing and wants to provide."

Despite the growing tension between operators and programers, the consensus is that Rupert Murdoch fundamentally altered the landscape when he offered to pay operators $10-plus per sub to launch Fox News Channel.

"I'm struck more by the fact that the upfront [payment] occurred than by the magnitude of it," Hindery said. "A year ago when we sat here, it was inconceivable.... If Rupert, Ted [Turner] and Discovery are paying upfront monies, there's a message there that we all have to reconcile." ■